

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

OCT 11 2017

Clerk, U.S. District Court
District Of Montana
Billings

JOSHUA LEE HELM,

Plaintiff,

vs.

YELLOWSTONE COUNTY
DETENTION FACILITY,

Defendant.

CV 16-53-BLG-SPW

ORDER ADOPTING
MAGISTRATE'S FINDINGS
AND RECOMMENDATIONS

Before the Court are Magistrate Judge Timothy Cavan's Findings and Recommendations filed on September 19, 2017. (Doc. 22). Judge Cavan recommending that this Court dismiss Helm's action for failure to state a federal claim. (*Id.* at 2).

When a party timely objects to any portion of the magistrate judge's Findings and Recommendations, the district court must conduct a de novo review of the portions of the Findings and Recommendations to which objections are made. 28 U.S.C. § 636(b)(1)(C); *McDonnell Douglas Corp. v. Commodore Business Machines*, 656 F.2d 1309, 1313 (9th Cir. 1981). The district court may then "accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate with instructions." 28 U.S.C. § 636(b)(1). The district court is not required to review the factual and legal

conclusions of the magistrate judge to which the parties do not object. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

Helm filed timely objections to Judge Cavan's Findings and Recommendations. (Doc. 23). Discussion of Helm's objections is unnecessary because he presents the same arguments he presented in his complaint, and his Amended Complaint. Despite the Court's direction advising Helm that his allegations were insufficient to state a federal claim, Helm simply reiterates the facts he pled in his Complaint and Amended Complaint. (See Doc. 23). The Court has reviewed *de novo* Helm's claims and Judge Cavan's findings and recommendations and agrees with Judge Cavan in full. Therefore,

IT IS ORDERED the proposed findings and recommendations entered by United States Magistrate Judge Cavan (Doc. 22) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that this matter is DISMISSED for failure to state a claim.

IT IS ALSO ORDERED THAT

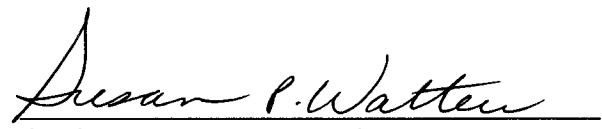
The Clerk of Court is directed to close this matter and enter judgment in favor of Defendant pursuant to Rule 58 of the Federal Rules of Civil Procedure.

The Clerk of Court is also directed to have the docket reflect that the Court certifies that pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure any appeal of this decision would not be taken in good faith. No

reasonable person could suppose an appeal would have merit. The record makes plain that the Amended Complaint lacks arguable substance in law or fact.

The Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Helm failed to state a claim upon which relief may be granted.

DATED this 11th day of October 2017.


Susan P. Watters
SUSAN P. WATTERS
United States District Judge